



Paul A. Romero, MA
CHIEF TECHNOLOGY OFFICER

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Appeal of a Decision of the)	
Universal Service Administrative)	
Company)	
)	
Albuquerque School District)	File No. SLD- 879346
Albuquerque, NM)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Appeal Submitted by Albuquerque Public Schools

Albuquerque Public Schools, Albuquerque, NM (Albuquerque or APS) respectfully requests the Wireline Competition Bureau (WCB) review and overturn a decision by the Universal Service Administrative Company (USAC). After an exhaustive Selective Review USAC denied Funding Request Number (FRN) 2494189 for the following reason(s):

The winning vendor was not selected in accordance with the vendor evaluation process described in the vendor selection documentation provided by you during the Selective Review. You did not adhere to your own criteria in the vendor selection process. FRN 2494189 will be denied because you failed to select the most cost-effective service offering in violation of the FCC's rules. Specifically, you sought E-rate funding for ISDN/PRI voice services from multiple service providers for the same locations and time periods on its FCC Form 471 Application No. 879346. The documents that you provided to USAC indicate that

you selected both Time Warner and CenturyLink to each provide the requested ISDN/PRI voice services to the same locations during the same time periods. In addition, the documents provided to USAC do not indicate that CenturyLink was unable to provide all of the requested ISDN/PRI voice services to Albuquerque School District. Therefore, because Time Warner services were more expensive than CenturyLink services, Time Warner services were not the most-cost effective offering as required by the FCC's rules and the *Macomb Order* and funding is denied.

Albuquerque appeals the decision for several reasons that will be discussed in further detail:

- The decision is factually flawed and those flaws include:
 - The claim that the winning vendor was not selected in accordance with the vendor evaluation process.
 - The claim that the ISDN/PRI services from Time Warner were more expensive than the same services from Century Link.
 - The decision implies that Albuquerque was requesting duplicative services, which is not the case.
- By selecting both Time Warner and Century Link the overall cost to Albuquerque and the Universal Service Fund was less than had APS simply awarded all of the services to Century Link (the vendor with the lowest OVERALL score). Contrary to USAC's claim the procurement did not violate the principles of the *Macomb Order*¹.
- The procurement complied with state and local procurement rules and APS believes it also complied with FCC rules.

¹ See *Macomb Independent School District*, DA 07-64, Rel. May 8, 2007

- If the FCC concludes that program rules have been violated APS believes a waiver is appropriate and consistent with the *Allendale Decision*².

We humbly request that the WCB remand this application back to USAC and direct USAC to make a positive funding decision within 90-days from the date of the Order.

Background:

Albuquerque is the largest school district in New Mexico and serves nearly one third of the K-12 students in New Mexico. It is the thirtieth largest district in the country with more than 87,000 students in 140 schools. APS has a service area of 1,230 square miles which is larger than the entire state of Rhode Island. Given the size of APS it is to be expected that the district will have a robust telecommunications infrastructure that will allow for load balancing across multiple vendors.

In Funding Year 2012 Albuquerque issued a Form 470 and RFP seeking bids on various services that covered three broad categories: Data Circuits, Internet Access, and Voice Services³. The Voice Services section of the RFP sought bids on a wide variety of services including DSS, DS1, DS3, ISDN/PRI and 1FB lines. In Section 5.0.1 of the RFP APS made potential vendors aware of the fact that the district reserved the right to award all or some of the work in each area to one or multiple vendors. Specifically, Section 5.0.1 stated:

APS reserves the right to make a either a single or multiple award contract(s) for all Areas of Work or, in any combination for each specific area of work alternatively, award Contracts covering one or more Areas of Work to different Finalist Offerors, whichever is deemed to

² See Allendale County School District, DA 11-723, Rel. April 21, 2011

³ See Attachment 1 for a copy of RFP #12-045GR-MC.

be in the best interests of APS. There may be more than one Contract award for each specific Area of Work. No points will be awarded for an Offeror's ability to bundle services. The Finalist Offeror with the highest combined score for all Areas of Work may not necessarily be awarded a contract for all Areas of Work if it is determined that it is in the best interest of APS to make awards to multiple Finalists Offerors involving less than all Areas of Work.

Given the size of APS this type of flexibility is required because in many cases a single vendor cannot provide services to all of the district locations. It is important to note that award of contracts to multiple vendors is allowable under state and local procurement regulations. Century Link and Time Warner submitted complete bids that were evaluated by the four voting members of the evaluation committee⁴.

The evaluation committee carefully considered the bids and the bids were scored in each of the three broad categories Data Circuits, Internet Access, and Voice Services. The Evaluation Committee decided it was in the best interest of the district to award contracts to both vendors to ensure competitive pricing was available to the district⁵.

As explained above Voice Services was a broad category that included a myriad of services and the only service in question on this appeal is the ISDN/PRI portion of Voice Services. While Century Link did have an overall better score than Time Warner and a better score in the pricing category for the entire Voice Services section of the RFP, Time Warner provided the **lowest** bid for the ISDN/PRI lines. In fact Century Link's bid for ISDN/PRI service was 15.3% higher than the bid from Time Warner.

⁴ A third bid was submitted by Windstream Communications, but it was disqualified for failure to return a required form.

⁵ See Attachment 2 for a copy of the Evaluation Committee Report.

It is important to note that by awarding contracts to both vendors APS did NOT order more services than what it would have needed if the entire contract was awarded to one vendor. If this were a case where duplicative services were ordered or where the award to two vendors led to higher costs to the district and the Universal Service Fund APS could understand the decision to deny funding.

Discussion:

Program rules require among other things that: 1) applicants comply with state and local procurement rules, 2) price be the most heavily weighted factor in the evaluation process, and 3) the solution must be cost effective. USAC has made no claim that the bidding process violated state or local procurement rules; however, USAC does claim that the “winning vendor was not selected in accordance with the vendor evaluation process described in the vendor selection documentation.” This is an incorrect statement. In an effort to increase competition and to ensure an adequate level of service, APS made it clear in Section 5.0.1 of the RFP that it reserved the right to award all or some of the work to multiple vendors. Albuquerque’s decision to award contracts to multiple vendors was consistent with the RFP.

USAC also claims that the services, in question, from Time Warner were more expensive than the same services from Century Link. Again this is an incorrect statement. The cost evaluation clearly shows that the monthly recurring charge for an ISDN/PRI line from Time Warner is \$425.00 and \$490.00 from Century Link⁶. While it is correct that Century Link had a higher overall score for the broad category of Voice Services, it is clear that for the ISDN/PRI subset Time Warner did have a lower cost.

⁶ See Attachment 3 Cost Evaluation on page 3.

Although this was not a basis for the denial, USAC makes note that APS “sought E-rate funding for ISDN/PRI voice services from multiple service providers for the same locations.” It is correct that the ISDN/PRI services from both vendors are terminating at the district data center, but each provider is delivering service to a distinct subset of users. APS wants to be clear that there is no duplication of services between the Time Warner and Century Link contracts.

USAC also claims that APS violated the principles of the *Macomb Order*, but the fact pattern in this case is different. FCC rules do not require applicants to select the lowest cost bid; rather the price of eligible goods and services must be the most heavily weighted factor. In this case APS did give price a higher weight than any other category. In the *Macomb Order* the FCC found fault with the fact that Macomb did not award all of the services to the low cost bidder, but instead awarded services to three separate vendors which increased the overall cost of the services by \$36,000. In this case awarding some of the services to Time Warner reduced the overall cost of the service by \$46,800.00 over the life of the five-year contract⁷. The similarity between Macomb and Albuquerque is simply that both districts awarded contracts to multiple vendors. The main distinction, though, is that Albuquerque awarded the majority of services to the vendor with the highest overall score and a slightly higher price and then awarded a small subset of the services to the vendor with the lowest cost.

APS does not dispute that Century Link had a higher overall score when considering all evaluation criteria, but the fact that the service from Time Warner has a lower cost cannot be overlooked. By awarding some of the services to Time Warner not only did APS save money they also diversified

⁷ APS has twelve ISDN/PRI lines with Time Warner and each line costs \$65 less per month than the same line from Century Link. Twelve lines at a savings of \$65 per month for sixty months results in a savings of \$46,800.

their network and attempted to put downward pricing pressure on the incumbent vendor. One of the goals of universal service is to increase competition and APS feels it helped to further this goal by awarding contracts to both vendors.

APS is hopeful that the WCB will agree that program rules have not been violated and will remand the application to USAC for further processing. If the WCB determines that program rules have been violated APS asks that a waiver be granted. APS believes a waiver would be consistent with the principles laid out in the *Allendale Order*. In the *Allendale Order* the FCC waived its rules in cases where price was not the primary factor in the vendor selection process, but the applicants selected the vendor with the lowest overall price. In this case price was the primary factor in the evaluation process, but Time Warner did not have the highest overall score when considering all factors.

In the *Allendale Order* the FCC agreed “with USAC's determination that the petitioners did not comply with the Commission's rule to assign the highest weight to price when evaluating bids.” However, it felt a waiver was warranted because “the record shows that for seven petitioners, the winning vendor's cost proposal was lower than the competing bids and therefore the applicants selected the least expensive service offering.” The APS appeal mirrors these appeals insofar that APS selected the vendor with the lowest cost to provide the services in question.

Conclusion:

APS believes it has demonstrated that program rules have not been violated and requests the WCB remand the application back to USAC for further processing. If the WCB does determine that program rules were violated we ask for a waiver of those rules consistent with the *Allendale Order*.

If this appeal is denied everyone loses. Both APS and the Universal Service Fund will pay more for

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the same services and applicants will be discouraged from trying to increase the competition for services. APS appreciates your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Romero", with a large, stylized flourish extending to the right.

Paul A. Romero

Chief Technology Officer

Albuquerque Public Schools